

16-784 MERIT MANAGEMENT GROUP V. FTI CONSULTING

DECISION BELOW: 830 F.3d 690

LOWER COURT CASE NUMBER: 15-3388

QUESTION PRESENTED:

Section 546(e) of the Bankruptcy Code prohibits a trustee from avoiding a transfer that, among other things, is made "by or to (or for the benefit of)" a financial institution. The payment at issue in this case was made by one financial institution to another financial institution, but the benefit and detriment of this transfer ultimately impacted companies that are not financial institutions.

The question presented is thus:

Whether the safe harbor of 11 U.S.C. § 546(e) prohibits avoidance of a transfer made by or to a financial institution, without regard to whether the institution has a beneficial interest in the property transferred, consistent with decisions from the Second, Third, Sixth, Eighth, and Tenth Circuits, but contrary to decisions from the Eleventh Circuit and now the Seventh Circuit.

CERT. GRANTED 5/1/2017